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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re BRITTANY G., a Person  
Coming Under the Juvenile Court  
Law.

B270445  
(Los Angeles County  
Super. Ct. No. DK11696)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JULIO G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Julie Blackshaw, Judge. Affirmed as modified.

Mareen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Julio G. (Father), a noncustodial and non-offending parent, appeals from a dispositional order of the juvenile court detaining his daughter, Brittany G., from him under Welfare and Institutions Code section 361, subdivision (c). We modify the order and affirm it as modified.

### **BACKGROUND**

Brittany G., who was seven years old, lived with her three half siblings (Kevin M., Junior M., and Brian M.) and their mother. In spring 2015, Junior, who was five years old, fell while playing unsupervised in a construction area next to their home and a month later Kevin had a seizure while with his father, who did not have Kevin's medications and could not provide information about his son's medical issues to hospital staff. In June 2015, Los Angeles County Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300<sup>1</sup> petition (Petition) on behalf of all the children, alleging failure to protect. Father, whose whereabouts were then unknown, was not notified of the detention hearing and was not named as an offending parent in the Petition.

At the detention hearing, the court deemed Father to be the presumed father of Brittany, found a prima facie case for detaining Brittany from him and detaining her siblings from their respective fathers, and released Brittany and her siblings to their mother.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

DCFS located Father prior to the August 7, 2015 hearing. He reported he had not seen Brittany since her mother disappeared with her five years earlier when Brittany was two years old, but prior to that time he had provided financial support and participated in her care. He wanted to see Brittany and to ensure her safety.

Father appeared at the hearing and represented he wished to resume contact with Brittany but, acknowledging that she did not know he was her father and did not remember him, he did not seek custody. The court, over Father's objection, ordered monitored visits.

Father had one visit with Brittany, in November 2015, during which he was calm, patient, and appropriate. DCFS reported no further visits occurred because mother refused to make Brittany available.

At the December 3, 2015 disposition hearing, Father's counsel stated he was not currently seeking custody of Brittany because she still had not been told he was her father. Counsel argued there was no basis for finding Father posed a substantial risk of harm, noting there were no allegations against him. DCFS asked only that Brittany not be released to Father.

Tracking the statutory language of section 361, subdivision (c)(1), the court found by clear and convincing evidence that there was substantial danger to the physical health, safety, protection or physical or emotional well-being of Brittany if she was not detained from Father. The court detained Brittany from Father and ordered monitored visits.

Father appealed.

## DISCUSSION

On appeal, Father contends the juvenile court erred in detaining Brittany from him. DCFS concurs.

We agree with the parties. Section 361, subdivision (c)(1) addresses the detention or removal of a child from the physical custody of a parent with whom the child is residing when the petition is initiated. Here, Brittany did not reside with Father and was never in his physical custody. Accordingly, her detention or removal from Father was error. Reversal is warranted because the error resulted in prejudice, i.e. it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error. (See *In re Julien H.* (2016) 3 Cal.App.5th 1084, 1089.) Here, Father was not named in the Petition and there were no findings against him.<sup>2</sup>

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<sup>2</sup> We note that Father does not challenge the portion of the disposition order limiting his access to Brittany to monitored visits. Under section 361, subdivision (a), the juvenile court has the authority to “limit the control to be exercised over the dependent child by any parent,” and under section 362, subdivision (a), the juvenile court has the authority to “make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” (See *In re Dakota J.* (2015) 242 Cal.App.4th 619, 632-633.)

### **DISPOSITION**

The matter is remanded to the juvenile court with directions to strike all references to detaining or removing Brittany from Father's custody under section 361, subdivision (c), in its December 3, 2015 disposition order. The order is affirmed in all other respects.

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CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.